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SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1947

No. .....

GEORGIA M. SPRUILL, *Petitioner,*

vs.

DANIEL E. CAMPBELL, *Executor, Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

(Exhibits attached are: A1, A2, A3, A4, A5)

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner respectfully shows:

I.

SUMMARY AND STATEMENT OF MATTER INVOLVED

This is a civil action proceeding. On August 27, 1943, petitioner filed a bill in equity in the District Court of the United States for the District of Columbia (R. 1-9) alleging the respondent to be the responsible party for payment

of the claim for $92,733.00 she holds in right against the estate of Abram Ralph Serven, deceased. Petition alleged (R. 2) that she is the "plaintiff in Law No. 83076, Law No. 86361 and App. D. C. Nos. 8163, 8164, 8165, 8172" and that "this statement of account against Abram Ralph Serven is correctly described in Law Nos. 83076 and 86361 and is correctly copied from the books of original entry of said docket numbers as by accrue described and that the charges were made in said books at or in the said docketed cases at the time of their respective dates; that the cause for which said charges were made is shown in said records as charged; that the charges are correct; and the account just and true as stated; that there is now due and owing thereon the sum of Ninety-Two Thousand Seven Hundred and Thirty-Three Dollars; that no part of said sum has ever been paid or in any manner settled or secured, and that there are no deductions or set-offs of any kind except such as are herein specified and credited as of record in pending cases, $92,733.00."

(Petitioner being unable to finance the necessary printing to enable her to lay this matter before the Supreme Court in better form, printed, must resort in argument to the means shown in Exhibits: "A1," "A2," "A3," "A4," "A5").

It appears of record undisputed and undisputable that the cause for this Spruill litigation that began in 1930 which continued unabated from May 20, 1930, to this January, 1948, is blackmail. See exhibit A1 pp. 1-19; and exhibit A2 pp. 1-53; and the record herein pp. 80, 81; also exhibits A, B, C, D, E, F, and exhibits 1, 2, 3, 4, 5, pp. 97, 100, 107, 110, 113, 115, 117, 119, 137, 141, 146, 148 which are attached to Petition For Re-Hearing herein pp. 89-96. Especially, follow the facts contained in the cases listed by the Star newspaper under front page headlines of the May 19, 1947 issue that is designated exhibit 5.

In every one of thes appeals the Court below listed under

date May 19, 1947 (R. 80, 81) is shown a copy of the court's decree pertaining to the damages it decreed this petitioner must accept, if, any cash at all she would receive for the injuries she had suffered and if ever again she would obtain possession of her property which was her home and which in 1930, had been taken from her by and through blackmail. Cited here are the page numbers to verify this statement: Appeals numbered 6154 pp. 141, 127; 6483 pp. 29, 103, 133; 6667 pp. 36-41; 6810 pp. 8, 10-13; 6841 pp. 193, 282; 6842 pp. 34-39; 7186 pp. 141, 190; 7656 pp. 84, 98, 99, 100; 8163 p. 90; 8272 pp. 110, 338-344, 345-348. This last filed is attached to petitioner's "Motion To Dismiss Auditor's Report and Give Plaintiff Possession of Her Property Located at 27 Logan Circle, N. W." This act of the petitioner in resubmitting to the Court, again, and again these numbers of times this paper it designates a decree with the demand that her property be returned to her, its legal owner, and the damages she is entitled to collect be paid to her is evidence of the fact, that, at no time has she surrendered her constitutional right in this matter. Petitioner says the act of the United States Court of Appeals for the District of Columbia (R. 80, 81) denying her right to collect this claim of $92,733.00 from the estate of Abram Ralph Serven by and through his executor, respondent herein, is illegal and in violation of the Constitution of the United States of America in that

(a) she demanded a trial by jury of the issue of damages in 1933 and the Court denied her that right, and

(b) she was forced out of her lawfully owned property, her home, in 1930 to collect the $225.00 demanded of her by blackmail methods and the same kind of fraud was practiced on her by and through the Auditor's office to collect the ransom for the blackmailer in 1942 which he had demanded her to pay to him in 1930, and

(c) she has been denied by the Court her right to take possession of her property even after it found by law she had the right to possess and live in the house which she was dispossessed of in 1930 contrary to law, and

(d) she having demanded a jury trial of the issue of damages in 1933 when by accrue a jury became necessary to determine the case on merit and the defendants having waived their right to trial by jury entitled petitioner to judgment by default for the amount named in Law No. 83076 and Law No. 86361 and that laches on their part fixed the amount at $92,733.00 at the time of filing of the above entitled case. *Fidelity & Deposit Co.* v *United States,* 187 U.S. 315, 320, 322; *Harvey* v. *Tyler,* 2 Wall. 329, 349; *Spruill* v. *Ballard* et al., 320 U.S. 796, No. 475 p. 458.

Respondent filed an answer (R. 12-18) to this bill denying in general the charges therein and submitting as authority for the denial this "Per Curiam" dated "December 27, 1937" that is attached as part of his answer. To prevent the printing of this per curiam as the Federal report upon that case petitioner, on the following day, December 28, 1937, filed a motion written in long hand charging the Court with incorrect statements it had made in this decision which is as said dated December 27, 1937.

JURISDICTION

Jurisdiction of this court is invoked under the Constitution of the United States, 16th section; United States Code, Annotated, Title 28, Sec. 384. (Judicial Code section 267.) Suits in equity, when not sustained. (R. S. 723; Mar. 3, 1911, C. 231, S. 267. 36 Stat. 1163) and, precedent decisions of this the Supreme Court of the United States of America which date back a hundred years or longer (R. 8, 19, 32,

34-44, 45, 46, 47, 48); and so positive it has been pertaining to the rights of the plaintiff that this Court says in *Crane* v. *Morris et al.*, 6 Pet. 598 "the circuit court has no authority whatsoever to order a peremtory nonsuit, against the will of the plaintiff. This point has been repeatedly settled by this Court and is no longer open for controversy." With the two cases cited above (187 U.S. 315, 320, 322; 2 Wall. 329, 349) showing how a defendant must answer and plead in order to avoid judgment by default there can be no doubt as to the power the Constitution has delegated to this the Supreme Court in this particular matter now before it in the above entitled case, and that petitioner's right to the possession of her house and lot and to collect this claim of $92,733.00 cannot be denied.

QUESTIONS PRESENTED

1. That to res judicata upon questions which arise by accrue in a matter after the case is filed the issues must be separated into classes and classed in the jurisdiction which the law provides for the determination of each issue on merit (2 Pet. 527, 536, 538), "for a fraud upon a statute is a violation of the statute." *United States* v. *Throckmorton*, 98 U.S. 65, 66, "Mr. Wells, in his very useful work on Res Adjudicata, says, sect. 499: Fraud vitiates everything, and a judgment equally with a contract; . . ." (R. 54, 60, 61).

2. For the court below to print the name "Frederick S. Tyler" in its 74 F. (2d) 464 report as a court appointed trustee in this decree it affirmed October 1, 1934, which decree was made by Justice Adkins of the trial court October 23, 1933, when the same Tyler had served notice (in writing) November 13, 1933, upon the trial court Justice that he would not serve as "trustee" is fraud. See the copy of "Memorandum" of Justice Adkins which he signed "November 15, 1933" shown in transcript in No. 954 p. 311

October Term 1940 *Spruill* v. *Ballard et al.*, 313 U.S. 576 (314 U.S. 707). This notice of Mr. Tyler is dated the same day the plaintiff in proper person had filed her designation of record and assignment of errors on appeal in the case *Spruill* v. *Ballard et al.*, 293 U.S. 625 appeal No. 6154 pp. 182, 186.

3. It was stated by Dorsey on oath before the Auditor, that: "The final decree is dated March 12, 1935" and: "That is the decree under which the sale was made." See "Plaintiff's Point and Authorities Upon the Issue Or Issues Now Open And Which Can Be Discussed Now" (R. 34-48). It is shown by paragraphs 13, 14 just how Dorsey, by the Auditor, divided the $47.50 a month rent between himself and others which had been taken in by and through the "Final Decree" (over a period of time dating back to November 24, 1930) which was spread in the Court Minutes March 13, 1935 under the equity No. 51443. Can this Court, picture, a more perfect swindle than this which is shown by Exhibits "A2," "A3," "A4," "A5," in the original of "Civil Action No. 16733 in the case *Spruill* v. *Campbell*, 326 U.S. 749, 810; that reveals, that, $20.00 per week was collected as rent for the basement apartments '34' and "35" in "the year 1944." Whereas, under the said decrees that are dated October 23, 1933, and March 12, 1935, the Court had collected rent for your petitioner at the rate of $47.50 per month upon or for the whole house. Can it be wondered at that the District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia would not allow the petitioner an appeal in forma pauperis in the case *Spruill* v. *Campbell*, Civil Action No. 16733. However, the record in the Supreme Court in *Spruill* v. *Ballard et al.*, 325 U.S. 865, 895 No. 1162 pp. 8, 9, 10, 11 reveals the photostat copy of the original rent receipts that show the $20.00 a week was collected—approximately $80.00 a month rent was collected for the basement of that "house" (R. 80, 81) in 1944,

which, the court below says "the sale of" under foreclosure in 1930," took place. If the house was sold, in 1930, why was the $47.50 a month rent credited to petitioner all those past years? If the two attempted sales that took place in 1930 was valid, then the two Federal reports—58 F. (2d) 517 and 74 F. (2d) 464 is a misstatement of fact printed in the law books.

4. A study of Dorsey's report, and the auditors hearing, would reveal to this Court most shocking evidence of fraud. See: *The United States of America ex rel Harryman Dorsey, Trustee, Complainant* v. *Charles Boutsele,* 26 Logan Circle, Northwest, Washington, D. C., Respondent, No. 63 Misc. At Law. D. C. What authority in equity or law can the Court rely on in sending Dorsey inside of the house of Boutsele—private property—private home—to collect money Dorsey demanded as a deposit for the purported sale of petitioner's property he, Dorsey, claims he made in May, 1936, at a public auction sale?

5. Petitioner, since filing of this, the above entitled case August 27, 1943, has been holding subject to its conclusion: "One Hundred Thousand and One Hundred Dollars ($100,100.00)" through the office of the recorder of wills of the District of Columbia. The last paragraph of the "Decree" dated October 23, 1933, and the last paragraph of the "Final Decree' dated March 12, 1935, and the last paragraph of exhibit "D" (the propose "Decree' the defendants by their attorneys signed) show a written agreement, that, the defendants are or were to pay the court costs of the case in equity No. 51443. Is there any reason for not having printed the plaintiff's record on appeal by the "Designation" she filed November 13, 1933 and charging the cost for printing to the defendants by the signed agreement they made in these decrees and in their original proposed "Decree" which, the plaintiff in that case filed as exhibit "D," on September 13, 1933? The

fact that the plaintiff in that case expelled her former attorney from the case for signing that original proposition, as attorney of record for the "plaintiff," does not relieve the defendants in the same case who lured him to sign the agreement that he should collect the $2,000.00, by the Court, they had written in their proposed compromise letter to him, that is dated June 19, 1933, in which letter the proposed $2,000.00 stipulated, is discounted from the $9,000.00 the plaintiff had borrowed. This she must pay to her former attorney as fees by the terms of the said proposed compromise settlement terms they offered June 19, 1933.

6. Has not this the Supreme Court of the United States of America an answer by law to the class of blackmail, operator who, by brute force, broke into the home of the citizen, forces the owner of the house out of her home—her property; and disposed of the same, by court order, ten years or more later to collect a trustees fee, which, the court had ruled was not a debt in 1930 and had found also that the persons, signing a certain instrument as trustees, were not legal trustees therefore could not have sold the "house" in 1930. Can our America be a safe country to live in with such a practice tolerated by the Federal courts in the land? Enduring peace will be when rule by law prevails through banishment of the tyranny of men by the Court doing justice.

Wherefore it is submitted that Petitioner, not being a lawyer besides having been pauperized as the records in this seventeen and a half years litigation show was done, will make her plea for justice by this form in the hope, that, the Court will see the wisdom of doing justice in this matter regardless of form and that the enemies of the country may see in our law is the power of the land she prays:

That a writ of certiorari i[illegible] of and under the seal of this Court, directed to the [illegible] States Court of Ap-

peals for the District of Columbia, commanding said court to do what is necessary and proper in this particular case that right may be vindicated and the dignity of the Court upheld that the Nation be not blamed because of error and that it will ever be honored because of having done right through its constituted agencies.

GEORGIA M. SPRUILL, *Petitioner,*
In Proper Person.

(Exhibit A3)

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IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA.

No. 9269.

GEORGIA M. SPRUILL, *Appellant,*

v.

DANIEL E. CAMPBELL, EXECUTOR, *Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, CIVIL DIVISION, IN EQUITY

BRIEF FOR APPELLANT

STATEMENT PERTAINING TO JURISDICTION

This is an appeal taken by Georgia M. Spruill from the order of dismissal of the above entitled cause entered by the District Court of the United States for the District of Columbia dismissing this action in equity on December 6, 1945 (R. p. 53). Notice of appeal herein was filed, February 1, 1946, together with the appellant's petition for waiver of costs which petition the Court granted (R. pp. 63, 65, 66). Subsequent to the entry of the said order, as indicated on the face of it (R. p. 54), the appellant on the 17th day of December, 1945, filed the "Application" which, in

open court, she had served notice that she would file; and she (R. p. 60) filed a motion, December 26, 1945, in which she sought to "Compel" the appellee to cite legal authority upon issues involved which by the records she cites herein it is shown have not been settled. The Court denied, both the application and the motion (R. p. 62) on January 24, 1946. The appellant then, as is shown on the face of the minute entry of that date, added for the record her exception to the Court's action, in dismissing the case. This took place "in open Court," on that same 24th day of January, 1946; that order on its face is clear, and her intention to continue to seek justice is made clear, also.

This Court by law is given jurisdiction of this case under the established citizen's right to a trial on merit of any and every grievance, which, the bill of rights grants that the plaintiff may bring to the attention of the Court. That right was settled by the Supreme Court of the United States many years ago. In the case, *Crane* v. *Morris, et al.*, 6 Pet. 598, the Supreme Court said: "This point has been repeatedly settled by this court and is no longer open for controversy." See this case referred to at page 8, in record herein in its full meaning in law. The Court will see by the fact in the record upon which this claim is based that the Spruill cases reveal the defendants, therein, foreclosed by default all right of trial the law had provided them by due process of law, and had thereby, established this just and lawful claim in equity that is set forth by the present case: For the plaintiff therein did not, at any time, surrender her right to trial of the issue of damages by a jury. The defendants by fraud, prevented her securing a jury trial of the issue of damages, which right, she demanded, in June, 1933, and when denied that right she filed the two declarations named on the law side of the Court. Fraud is not outlawed by time within a period of thirty years, or, within the lifetime of the defrauded person (98 U. S. 65, 66). Mr. Wells, in his very useful work

on Res Adjudicata, says, sect. 499: "Fraud vitiates everything, and a judgment equally with a contract that is a judgment obtained directly by fraud, and not merely a judgment founded on a fraudulent instrument. . . . " (2 Pet. 527, 536, 538.) "There can be no civil right where remedy for that which is itself illegal." The cases cited in the "Index To Authorities" that is shown at pages 45, 46, 47, 48 of the record, herein, throw light upon the issues of fraud. The defendants, in the cases cited in the record herein at pages 2, 3, and 16, began the practice of fraud by misuse of court process as far back as May, 1932: Soon after the original case had been won by the plaintiff as is shown in *Spruill* v. *Ballard et al.*, 61 App. D. C. 112; 58 F. (2d) 517, the defendants, therein, by leave of the District Court filed an answer to the original amended bill in which they tried to raise a moot question, in District Court, upon an issue the Supreme Court of the United States closed many years prior to that year, 1932. The United States Reports show that in 1846—a hundred years ago, the Supreme Court of the United States had ended for all time a controversy, upon the point the defendants tried to make an issue by motion to dismiss filed in 1930 and by their answer, filed in 1932 (61 App. D. C. 112 and 64 App. D. C. 60; 74 F. (2d). In this case this Court had closed, through that answer, the defendants filed, by permission of the court below, they succeeded in reopening the closed case in an argument in this Court, in the year 1934. The opinion in *Michoud et al.* v. *Girod et al.*, 45 (4 How.) U. S. 553, 555, 557, shows the Supreme Court declared, with other views expressed by it, that: "In this conflict of interest, the law wisely interposes. It acts not on the possibility, that, in some cases, the sense of that duty may prevail over the motives of self-interest, but it provides against the probability in many cases, and the danger in all cases, that the dictates of self-interest will exercise a predominant influ-

ence, and supersede that of duty." So it is seen by this strong language of the Supreme Court, that, not only did defendants Ballard and Severn violate the law when luring the appellant, herein, to sign that fraudulent instrument back in 1927 which they named: a deed of trust; but all these years: after May 20, 1930, the day the original cause was filed, these defendants and those named later: by supplement, made use of court process fraudulently to keep the law from catching up with them. As proof, that fraud has been committed, reference is made to the record in the following cases: Law No. 83076, Law No. 86361 and Equity No. 51443 that were by the Court consolidated under numbers: 8163, 8164, 8165, 8272, on ~~July 12~~ August 27, 1942. A number of appeals by the plaintiff, in these cases, had been made prior to the time these named had been consolidated as one and the same record, in this court. The references on fraud made here, are found in Appeal 6154 pp. 96, 103, 107, 108, 110, 111, 127, 141; Appeal No. 6810 pp. 17, 18, 19; Appeal No. 8163 pp. 71, 72, 79, 80, 81. If the facts the record contains are gone into sufficiently to comprehend the moves that were made by the defendants, the Court, beyond doubt, will see to what extent the court itself can be used by unscrupulous persons to commit fraud. (Compare "Exhibit D" p. 127, the plaintiff rejected with the Decree p. 141).

Appellant believes this preliminary statement of the nature of the cause that brought about filing of the above entitled case is necessary in order to make the present cause clear.

STATEMENT OF CASE

This case involved a claim for debt the plaintiff below and appellant herein filed against the administrator—defendant below and appellee herein, in the estate of Abram Ralph Serven, deceased, for the sum total of Ninety Two

Thousand Seven Hundred Thirty-three Dollars ($92,-733.00).

The foregoing statement pertaining to jurisdiction in which it is shown that the law applied by the Supreme Court of the United States in the settlement of disputes as to what constitutes a legal trustee and what the law requires pertaining to the court dismissing a complaint the plaintiff makes left open for controversy, in 1930, in the *Spruill* v. *Ballard and Serven case* (Appeal No. 5290) the one point only, that of making a threat to sell the property of the plaintiff to collect the trustee's fee for $225.00 which the defendants Ballard, and Abram Ralph Serven claimed was due them: This threat prevented appellant herein negotiating a loan for $9,000.00 secured by her property with which to pay back the Nine Thousand Dollars she had borrowed from Ballard and Serven, on a three year loan, when the notes would come due and payable July 1st, 1930. The only point that was settled: by the filing of that bill in equity on May 20, 1930, was, to learn in the argument that was made in the case that William T. Ballard and Abram Ralph Serven were not trustees under the law. This, if language can convey an idea, meant these brokers made that threat to extort money from appellant that she did not owe; and that before this Court upon the appeal she had taken could make its decision in the case the threat was carried out (Appeal No. 6142.) which left no point in equity gained by the opinion it handed down March 28, 1932: For the Supreme Court had decided the issues pertaining to mortgages, in the year 1846. But the record in this present case shows, however, that from November 24, 1930—the day these brokers took possession of appellant's property by the United States Marshal—to this August, 1946; the defendants in these cases—cited at pages 2 and 3 in the record herein—have held fast to the loot they captured by the United States Court decree this Court affirmed (excepting the $2,000.00 attorney fee) on the

strength of that threat: the illegal trustees, Ballard and Abram Ralph Serven, made back in 1930; and no argument the appellant heretofore has been able to make in the numerous appeals taken by her in which she bombarded the Court with authorities in law, which are part of the record now, has she been able to offset the little word: "Res judicata" that these brokers have used numerous times in the record to answer the challenge that was made by the law, in the cases: At Law No. 83076 (Appeal No. 8164); At Law No. 86361 (Appeal No. 8165), and again in the answer in the present case the law term "res judicata" is the word used as the appellee's plea that the aforesaid decree closed these law cases. This case like the other cases was dismissed on the strength of that decree which on its face shows that it is vitiated by fraud and therefore is null and void.

STATUTES INVOLVED

Revised Statutes of the United States, 2nd Edition, Sects. 1977, 1978, 1979, 5510, 5407, 5519. United States Code, Annotated, Title 28, Sec. 384. (Judicial Code section 267.) Suits in equity when not sustained. (R. S. 723; Mar. 3, 1911, C. 231, S. 267. 36 Stat. 1163)—See the record herein. Pages 27 and 32.

STATEMENT OF POINTS

Apparent of record at pages 67, 68, 69, the 18 points designated in the record herein cover all that is necessary to state as points in this brief: for it would be impossible for the appellant to pay the costs, to properly prepare her brief for the Court; and in view of this fact, and the fact that success in this case depends upon linking relevant facts the records of the cases cited in the record at pages 2, 3 and 16 contain, it would be unjust to expect the appellant, in proper person to prepare the kind of argument

this complicated matter would require. So the duty of making the necessary research for those record facts becomes that of the Court in this case.

SUMMARY OF ARGUMENT

1. This Court Erred October 1, 1934 By Not Dismissing The Cross Appeal That Was Taken By The Defendants October 23, 1933 In The Equity Case Upon The Matter Which This Court Had Settled On March 28, 1932 And By Its Failure To Send The Questions Of Law Back To The District Court To Be Tried There In The Legal Jurisdiction Of The Court. (R. p. 16.)

This conglomeration of issues which this Court brought about by its errors left the court below Bound To That Decree Which On Its Face Shows Fraud—that it had been vitiated by fraud; and except that court had on the plea the plaintiff made reopened the whole matter by reexamination of the record it could not remove the fraud from the record. All the appellant could do about it before filing of the present cause in equity, was to keep the issues involved alive through one appeal after another brought to this Court, from time to time and when denied by this Court take the appeal on petition to the Supreme Court. Meanwhile, from May 20, 1930 to this August, 1946, because of the fraudulent intent on the part of her opponents which the records, in those cases, reveal; and, because of apparent inability on the part of the court below and this court to see and judge the issue of damages by due process of law, at the proper time, the appellant herein has been made to suffer untold anguish, great property loss and, irreparable personal injury.

2. Back and forth by one appeal and petition after another the record has gone from the Federal District Court to the Supreme Court of the United States: From the time, in October, 1934, this Court decided the defendants cross

appeal in the case in equity numbered "51,443" this class of weaving the record that now is stacked more than thirty inches high in the Supreme Court files has continued. That cross appeal taken more than three years after the court below denied the bill in equity, amended as of June 18, 1930, the 3rd day of July, 1930, was and is illegal.

3. Finally, when there was an appeal in each of the two law cases and two appeals in the equity case pending in this Court: at the same time, the motion to consolidate which the appellant had filed and this Court granted had brought the issue of damages in the confine of one record when the present case was filed, August 27, 1943: By the facts, this consolidated record reveals, this bill in equity that was based on those facts now furnishes a remedy in equity by which this debt can be settled by the Court, according to the rule in law that supplies a remedy, in equity, when there is no plain and adequate remedy in law.

ARGUMENT

1. Laches Acts Two Ways For The Innocent And Against The Lawbreaker And The Court Below Erred On Failing To Find Fraud Had Vitiated Its Decree This Court Affirmed In October, 1934 And In Not Taking Initiative Action To Correct The Error It Had Made By Its Own Decree by Granting The Relief This Bill Calls For in Equity.

The cause for filing the original bill in equity on May 20, 1930, was to stop the defendants therein from carrying out a threat they had made to sell the plaintiff's property to extort, as trustees, a fee of $225.00 from her which she did not owe; By and through the original bill the plaintiff in that cause sought an injunction for a two-fold purpose. Had the District Court granted the injunction she prayed for, in 1930, she could have secured a new loan by her property with which to pay back to these illegal trustees—the de-

fendants in that complaint—the $9,000.00 she had borrowed from them on a three year mortgage loan and at the same time been able to remain in her property pending action by this Court upon the appeal she took in 1930. The Court below on the dismissal of the original case, in July, 1930, and the illegal trustees, defendants therein, carrying out that threat, that month and year (after the matter on appeal was in this Court), left nothing to be gained by the opinion of this Court it published March 28, 1932, that had not been law that was written in an opinion the Supreme Court of the United States published in the year 1846—See pages 2, 3, 4, in this brief and the authorities cited, by the: "Index To Authorities," which is shown at pages 45, 46, 47, 48, of the record herein. Fraud is not definable in any particular rule in law. Therefore, it must be handled in a court of equity as each case demands. The "Motion To Strike" that is shown in the Clerk's File, in this Court, in Appeal No. 6154, the appellees in this appeal filed was never acted upon by this Court. That motion shows how fearful were the defendants, in Equity No. 51,443, that this Court would find them out by the contents of these two pages they wanted striken from the record. See the record in Appeal No. 8163, pp. 40, 55, 57, 59, 60, 71, 72, 79, 80, 81; Appeal No. 8164, pp. 4, 5, 14, 15, 16, 20, 21, 31; Appeal No. 8165, pp. 2, 7, 9, 16, 18, 20, 30, 32, 33; Appeal No. 6154, pp. 96, 102, 103, 107, 108, 110, 111; Appeal No. 6810, pp. 17, 18, 19. That motion for leave to intervene, shows on its face that no leave of Court was obtained to file it in the clerk's office of the court below the petition that is referred to in it and the petition, on its face, shows that it has never been filed in the clerk's office of that Court; and that petition and rule to show cause that was filed in the District Court Clerk's office on September 9, 1933, never to this day in 1946 has been heard and/or disposed of in any way. The case, *Ballard et al.* v. *Spruill*, 64 App. D. C. 60, on appeal was before this Court for argument at the time that motion

to strike was filed in clerk's office of this Court and it was filed about the day the case had been set for argument. With the $50,000.00 damage suit pending in District Court awaiting the action this Court would take upon No. 6154. "Appeal," it is not to be wondered at that the defendants in the equity case resorted to such maneuver in this Court as the record in its office shows was done. Appeal No. 6154 was taken by the plaintiff in the case on grounds she had been denied her right to a jury trial of the issue of damages. The record in that case shows the defendants therein had waived their right, in writing, to take an appeal; and no doubt the appeal that the plaintiff took upon the points in law is the cause for the defendants, on appeal, taken in 1933, bringing the record to this Court in 1934 that upon cross appeal in the Equity No. 51443 case this Court settled in 1932—two years before the cross appeal was taken.

Since fraud cannot be put over through a plea that laches stops the Court from giving relief to the defrauded person and, in equity, at all times in reason, there is found a remedy against fraud (where there is no plain and adequate remedy at law) this bill of complaint for relief to the appellant herein furnishes a remedy, and the appellee, who is the administrator of the estate of Abram Ralph Serven, deceased, could by the law, through equity, pay to the appellant the $92,733.00 she claims is due her.

See the following reference to the Record, herein:

PLAINTIFF'S POINTS AND AUTHORITIES UPON THE ISSUE OR ISSUES NOW OPEN AND WHICH CAN BE DISCUSSED NOW, EXHIBIT B, AND INDEX TO AUTHORITIES (R. pp. 34-49)

This index contains reference to authorities upon the law of the land and, Ex. B, shows appellant's right to prosecute the case through the Supreme Court on waiver

of court costs is preserved (Appeal numbers 8163, 8164, 8165, 8272.) *Spruill* v. *Ballard et al.*, 320 U. S. 796 and 321 U. S. 803, and under this caption citations to the records in the court below are found. The following cases cited, strengthen this argument. *Silsby et al.* v. *Foot*, 55 U. S. (14 How.) 222, "as it has been repeatedly decided that the courts of the United States have no power to order a peremptory nonsuit, against the will of the plaintiff, it is not necessary to examine the grounds of the motion." *Doe* v. *Grimes et al.*, 1 Pet. 469—"The Courts of the United States have no authority to order a peremptory nonsuit, against the will of the plaintiff, on the trial of a cause before a jury. The plaintiff might agree to a nonsuit, but if he does not so choose, the Court cannot compel him to submit to it." p. 471. "If the Courts below should have this power, a plaintiff may be prevented the opportunity of bringing his case before the highest judicial tribunal of the United States. If a Court can in any instance order a nonsuit against the consent of the plaintiff, it may only be when no questions of facts are involved, but the only matter before the Court is a question of law. This case exhibits facts upon which a jury were the proper judges." In this case, "Mr. Chief Justice Marshall decided the opinion of the Court," and quoting further: "He had a right by law to a trial by jury, and to have had the case submitted to them. He might agree to a nonsuit; . . . But the state of the record does not enable this Court to render a final judgment because the record is defective, . . . The plaintiff may therefore apply for a certiorari, to bring up a perfect record, or dismiss the present writ of error and proceed anew;" p. 473. "If there exists any case prior to that of *Macbeth* v. *Holdeman*, 1 Term R. 172, in which the right of the plaintiff to refuse to be nonsuited was recognized, I cannot recollect it; since in that case it would seem that in ordinary cases the right is recognized;" *D'Wolf* v. *Raband et al.*, 1 Pet. 476. "A non-

suit may not be ordered by the Court, in any case, without the consent and acquiescence of the plaintiff." p. 497 (498). "The whole facts were left open to the jury, and so far as they were imperfect, or inconclusive, the defendant has had the full opportunity of addressing his views to the jury, and they have found their verdict against him." *Crane* v. *Morris et al.*, 6 Pet. 598. "Upon a deliberate review of the questions of law discussed and decided in the case of *Carver* v. *Jackson ex dem. of Aster*, 4 Peter's Ret. 1, the Court are entirely satisfied with the opinion and judgment pronounced on that occasion. . . . This point has been repeatedly settled by this Court, and is not now open for controversy."

On Fraud By Mr. Chief Justice Holmes: See *Elison* v. *Wilborn*, 281 U. S. 457, 459, 461. This case appears to apply to the class of fraud upon which the appellee herein claims "Res judicata." This so called decree, in fact, is the product that was produced by the defendants in the case—64 App. D. C. (U. S.) 60—by their attorneys, appellee herein being one of these defendants, and who submitted it to the Judge who signed that paper October 23, 1933, which, in the record is named : "Decree."

Because of fraud practiced by those defendants there can be no doubt as to legal ownership of the property involved being vested in the appellant, herein, and that she should have been permitted to remain in possession of the property all these years since November 24, 1930, the time she was forcibly evicted from this real estate, the house, which was her home. Why should judgment for the amount this claim for debt requires not be assessed against the estate of Abram Ralph Serven, deceased? What reason can the honorable Court give for aiding and abetting these parties in the commission of such wrong by and through the adoption of that paper, as the Court's decree, in which these persons had agreed to make settlement to appellant in the amount of One Thousand ($1,000.00) Dollars, for

the damages she had suffered: from the time in 1930 the trouble began up to and including the month of June, 1933? It is astonishing and hardly believable that a court of the United States would hesitate in the disposing of this decree which on its face shows it to be vitiated by fraud. *La Grange,* 113 U. S. 1. "The general grant of legislative power in the Constitution of a State does not authorize the legislature, . . . , to take private property, without the owner's consent, for any but a public object. p. 6. "A public purpose is one that promotes the general prosperity and welfare of the community." *Head* v. *Amoskeag Manu. Co.,* 113 U. S. 12 . . . "the Bill of Rights of which declares that all men have certain natural, essential and inherent rights, among which are the acquiring, possessing and protecting property, and that every member of the community has a right to be protected in the enjoyment of his property." p. 14, 26. "This rule that the taking must be for the use of the public, and not permissive, but of right, has been recognized in many other cases, and is the only one which will bear examination." *Missouri P. R. R.* v. *Nebraska,* 164 U. S. 417. "The taking by a State of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the Fourteenth Article of Amendment of the Constitution of the United States."

SUMMING UP CAUSE FOR THIS PROTRACTED LITIGATION

(1) An extortion threat made by William T. Ballard and Abram Ralph Serven, defendants, in the original case. The instrument by which these parties loaned the appellant herein $9,000.00 was fraud, and by a clause in it, a threat was made by the parties to sell the plaintiff's property to collect a fee of $225.00 for themselves which she did not owe.

(2) The dismissal of the amended bill of complaint the plaintiff had filed for injunction on June 18, 1930, July 3, 1930, and the plaintiff's appeal taken at that time which this Court acted upon on March 28, 1932.

(3) Permission allowed the defendants through District Court to reopen the closed case (61 D. C. U. S. App. 112) by an answer they filed to the aforesaid amended bill on May 9, 1932.

(4) This fraudulent move on the part of the defendants, therein, necessitated the naming of the additional defendants by the plaintiff in a supplemental bill of complaint she filed, by permission of Court, in July, 1932. This adding of additional parties delayed the trial which the defendants demanded in the equity cause, in 1932, upon the matter: this Court has closed by its opinion—61 App. D. C. 112, March 28, 1932. With the delay that was brought about, unnecessarily, the trial in that equity case was not reached in District Court until June 27, 1933.

(5) Denial by the Court of the plaintiff's motion for a jury trial of the issue of damages that was filed, June 27, 1933; and the Judge holding Court, as judge and jury: arbitrarily deciding a "$1,000.00" for the damages the plaintiff had suffered was all that she was entitled to collect. This opinion of that Judge based upon his own findings of fact and the decree thereon forced the appellant herein, to take an appeal upon the issue of damages from the Judge's decree, October 23, 1933, upon the grounds she had been denied her right to a jury trial of the issue of damages.

This all took time: prolonging the time when res judicata, in fact, could be established: For this Court erred by affirmation of the lower court decree with the one exception, only, that of eliminating therefrom the $2,000.00 attorney's fee. Its action being in violation of the Constitution of

the United States, in that on the face of that "Decree" it can be seen that it is vitiated by fraud and gave cause, by accrue of circumstances for the perpetuation of this litigation throughout these years since 1930, the year it began. "A fraud upon the statute is a violation of the statute"—*Bank of the United States* v. *Owens and others,* 2 Pet. 527 536, 538 (R. p. 46). "In a case of actual fraud, . . . length of time is no bar . . . to giving relief within the lifetime of either of the parties or within thirty years after it has . . . become known to the party whose rights are affected by it." *Hoyt* v. *Latham,* 143 U. S. 553, 557, 566, 567, 570; *Michoud et al.* v. *Girod et al.,* 45 (4 How.) U. S. 555, 557, 560, 561; *Mackall* v. *Cosilear,* 137 U. S. 556, 566; *North* v. *Peters,* 138 U. S. 283 (R. p. 48).

It is respectfully submitted to the Court that the law of this land means a simple application of plain practical rules by which it can do justice to all citizens and that the intent as the Constitution of the United States reveals the will of the people is that the courts apply this law in such manner, that, all the people will be protected by it.

CONCLUSION

For the foregoing reasons, and those shown in these cases cited here: "The rule requires the affidavit not only to deny the right of the plaintiff but to state also in precise and distinct terms the grounds of defense, which must be such as would if true, be sufficient to defeat the plaintiff's claims in whole or in part." *Fidelity* v. *U. S.,* 187 U. S. 320, 321, 322. "Parties will be presumed in this court to have waived their right to a trial by jury of issues of fact wherever it appears that they were present at the trial in person or by counsel, and made no demand for a jury. But unless it appear that they were so present, or otherwise gave consent, it is error, for which the judgment must be reversed, to try such issue in actions at law without a

jury." *Kerney* v. *Case,* 12 Wall. 275, 276; *Ward* v. *Maryland,* 12 Wall. 431, "it should not be forgotten that the people of the several States live under one common Constitution, which was ordained to establish justice and which, with the laws of Congress and the treaties made by the proper authority, is the supreme law of the land;"—it is further submitted that a judgment should be ordered setting aside the lower court decree that is dated October 23, 1933, and shown in Appeal No. 6142 at page 47, and in same order require that this claim for $92,733.00 be paid to the appellant by the appellee herein, and also: require that the appellant's real estate property which, in 1930, was taken from her contrary to law be given back to this appellant, who, at all times from the time she was dispossessed of her property in that year 1930 has been the lawful owner of it.

Respectfully submitted,

GEORGIA M. SPRUILL,
Washington, D. C.
In Proper Person.

(Exhibit A4)

United States Court of Appeals

DISTRICT OF COLUMBIA

No. 9269

GEORGIA M. SPRUILL, *Appellant,*

v.

DANIEL E. CAMPBELL, *Appellee.*

APPELLANT'S REPLY BRIEF

The appellant says that the appellee has made false statements in his brief:

I.

What he says in the summary of argument regarding "res judicata" is not true.

II.

What he says regarding appellant's brief being "a review" is also not true.

III.

In his argument, in view of the facts in the case, citing "*Spruill* v. *Ballard, et al.,* 64 App. D. C. 60, 74 F. (2d) 464" as proof of "res judicata" and directing this Court to its unprinted opinions to make the argument more convincing is apparently making use of the crafty methods to deceive this Court that were used by the defendants in

these cases cited to obtain that decree by the District Court which on its face fraud is revealed. This "Dorsey," was employed by the defendants to secure the signature of "Jesse C. Adkins, Justice" upon a copy of a paper the original of which the same Judge had refused to sign. This copy, that the appellee herein calls the Court's attention to in *Spruill* v. *Ballard, et al.,* is the base on which his "res judicata" claim rests.

IV.

The "litigation covering 16 years" referred to at page 5 in appellee's brief is the result of the crafty methods that were employed which enabled the defendants in the cases cited in his brief to obtain a decree in District Court that is vitiated by fraud and which enabled them to have same affirmed by this Court.

a. To "review," means looking something over that has been looked over before. In view of the fact this Court in the case *Ballard et al.* v. *Spruill,* 64 App. D. C. 64, 74F (2d) 468, held the "appeal No. 6142, supra"; shows by the Court's own published report: in the case *Spruill* v. *Ballard et al.,* 64 App. D. C. 64, 74 F. (2d) 468, that—Appeal No. 6154 was closed only on the point in equity this Court settled in *Spruill* v. *Ballard et al.,* 61 App. D. C. 112, 58 F. (2d) 517, and that it did not go into the grounds upon which Appeal No. 6154 is based sufficiently to find the appellant in that appeal based her appeal on her right to a jury trial of the issue of damages; and that at no time after June 27, 1933, when by motion in open Court she demanded a jury trial, did she waive that right.

b. It is apparent of record in this Court that the defendants, in the cases appellee cites, thought it quite nice: to be able to deceive the Court by the Motion for more time to answer the appellant's "Brief No. 6154" which was filed by them in this Court, March 29, 1934, and

granted by it, April 9, 1934. But apparently it did not dawn on their mind that the yellow scratch paper brief they scoffed at, and never answered, would by transcription be attached as part of the Court's record in Appeal No. 6841, pp. 481-499, which attached as exhibit is shown at page 467; and that this part would go to the Supreme Court, as a permanent record, in the case *Spruill* v. *Ballard et al.*, 303 U. S. 666. (It being attached to the appellant's "Petition for Review . . . ," as an exhibit, in this Court's record, which same record by request, was returned to the Clerk's Office, here, the Court may examine, now, that brief, which, never before has been examined.) So your appellant repeats and says a review cannot take place except a prior examination had taken place.

c. Appellant's brief in the present case on its face shows that she has made use of the litigation of the past "16 years" only through citations she has made to the undisputed undisputable facts the records covering these sixteen years contain.

V.

That the Court may be able to correct its published error in the case appellee cites, namely: "It appears that after the decree of the court was entered in that case, appellant, Georgia M. Spruill, filed a proposed decree to be substituted for that of the court"—*Spruill* v. *Ballard et al.*, 64 App. D. C. 64, 74 F. (2d) 468, the appellant prays that the brief in Appeal No. 6154 will be examined and the Court will find that the "proposed decree' which "Georgia M. Spruill filed" had been submitted to the Court below in open Court, before the paper the Judge signed as the Decree of Court so much as had been typed, or copied from the original paper that Judge refused to sign. It is submitted here in argument that it appears by the *Brown* v. *Bar Association*, Appeal No. 7552 case, that Judges who rely on lawyers of the District of Columbia, to read

the law to them, are in error. This case proves beyond doubt, that, for lack of knowledge or because of the commission of willful wrong, the Bar Association of the District of Columbia cannot be relied upon as guide for the courts of the District of Columbia. The appellee has not submitted in argument an established authority upon equity and law in his brief. He simply reminds the Court of the erroneous action taken by it, previously; and offers no authority to prove that action was in keeping with the principle governing equity, or, rules in law which are laid down by Congress, and the Supreme Court of the United States. .

GEORGIA M. SPRUILL,
Appellant,
In Proper Person.